REMARKS

Claim Status

Claims 1 - 16 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102.35 and USC §103(a) Over McAtee, et al.

Claims 1 -16 are rejected under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103 (a) as obvious over McAtee, et al.

Applicants respectfully traverse the rejection.

The Office Action states McActee discloses a substantially dry disposable cleansing article comprising polyester fibers, lathering surfactants, conditioning agents and solvents. The Office Action states that McAtee teaches all of the instantly required, and as such is considered anticipatory. The Office Action admits that McAtee is silent with respect to the cleansing article having hot melt properties. The Office Action states that it would have been obvious to one of skill in the art to exhibit hot melt properties because McAtee each of the claimed components in their requisite proportions.

McAtee does not teach and every one of the elements of Claim 1, 14 and 16. anticipate the present invention. Specifically, McAtee does not teach a lathering cleansing composition comprising (i) a safe and effective amount of one or more mild *crystalline* surfactants; (ii) water and (iii) a safe and effective amount of one or more polar solvents other than water; wherein the composition exhibits hotmelt behavior. Therefore, McAtee cannot anticipate the Applicants' Claims 1, 14 and 16. As well, because McAtee does not teach or suggest all of the claim limitations of Claims 1, 14 and 16, it does not establish a *prima facie* case of obviousness. Therefore, McAtee does not render Claims 1-16 of the Applicants' present invention unpatentable under 35 U.S.C. § 102 (b) or obvious under 35 U.S.C. § 103(a).

Rejection Under 35 USC §103(a) Over Lorenzi, et al

Claims 1 -16 are rejected under 35 U.S.C. 102(b) as anticipated by Lorenzi, et al. (U.S. Patent No. 6,491,933) or Lorentzi, et al. (U.S. Patent No. 6,322,801).

The Office Action states Lorentzi '933 and Lorentzi '801 discloses a substantially dry disposable cleansing article with polyester fiber, lathering surfactants, conditioning agents, solvents and benefit agents. The Office Action states that Lorentzi teaches all of the instantly required, and as such is considered anticipatory.

Lorentzi '933 and Lorentzi '801 do not teach and every one of the elements of Claim 1, 14 and 16. anticipate the present invention. Specifically, Lorentzi '933 and Lorentzi '801 do not teach a lathering cleansing composition comprising (i) a safe and effective amount of one or more mild *crystalline* surfactants; (ii) water and (iii) a safe and effective amount of one or more polar solvents other than water; wherein the composition exhibits hotmelt behavior. Therefore, Lorentzi '933 and Lorentzi '801 cannot anticipate the Applicants' Claims 1, 14 and 16. Therefore, Lorentzi does not render Claims 1-16 of the Applicants' present invention unpatentable under 35 U.S.C. § 102 (b).

Double Patenting

Claims 1-16 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-39 of copending Application No. 10/677,868. The rejection has been rendered moot because the Application the Examiner references has been abandoned.

Claims 1-16 are provisionally rejected under the judicially created doctrine of double patenting over claims 1, 6 and 10-14 and 1-21 of U.S. Patent No. 6,491,933 and U.S. Patent No. 6,322,801.

According to Section 804 of the MPEP: Any obvious-type double patenting rejection should make clear:

(A) The difference between the inventions defined by the conflicting claims-a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue an obvious variation of the invention defined in the claim.

In addition, the Federal Circuit has held that the Examiner's showing of obviousness must follow the analysis used to establish a prima facia case of obviousness. *In re Longi*, 759 F.2d 887,225 USPQ 645, 651(Fed. Cir 1985)

Applicants respectfully submit that the obviousness type-double patenting rejection is improper because the Examiner made a showing of obviousness or established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. In the present case, the Examiner has not shown that all of the claim limitations are taught or suggested by U.S. Patent No. 10/430,617. Thus, the Examiner's rejection is improper.

A *prima facie case* of obviousness has not been met because the prior art references do not teach or suggest all of the claim limitations in Claim 1, 14 and 16. For example, the reference does not teach or suggest a lathering cleansing composition comprising (i) a safe and effective amount of one or more mild *crystalline* surfactants; (ii) water and (iii) a safe and effective amount of one or more polar solvents other than water; whercin the composition exhibits hotmelt behavior.

Therefore, U.S. Patent No. 6,491,933 and U.S. Patent No. 6,322,801 do not teach or suggest each and every element within Claims 1, 6 and 10-14 and 1-21. Therefore, the reference does not render Claims 1, 6 and 10-14 and 1-21 obvious under 35 U.S.C. § 103. Thus, the Examiner's obviousness-type double patenting rejection is improper.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. 102(b), under 35 U.S.C. 103 (a) and double patenting. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-16 is respectfully requested.

Respectfully submitted,
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